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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on behalf
of S.M., a minor,
Plaintiffs,

Civil No. 6:20-cv-01163-MTK
(Lead Case)

v.

MARK DANNELS, PAT DOWNING,
SUSAN HORMANN, MARY KRINGS,
KRIS KARCHER, SHELLY MCINNES,
RAYMOND MCNEELY, KIP OSWALD,
MICHAEL REAVES, JOHN RIDDLE, SEAN
SANBORN, ERIC SCHWENNINGER,
RICHARD WALTER, CHRIS WEBLEY,
ANTHONY WETMORE, KATHY WILCOX,
CRAIG ZANNI, DAVID ZAVALA, JOEL D.
SHAPIRO AS ADMINISTRATOR OF THE
ESTATE OF DAVID E. HALL, VIDOCQ
SOCIETY, CITY OF COQUILLE, CITY OF
COOS BAY, and COOS COUNTY,

Defendants.

PLAINTIFFS' MOTION FOR LEAVE
TO FILE A COMBINED RESPONSE
TO DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

VIDOCQ SOCIETY,
Cross-Claimant,

v.

MARK DANNELS, PAT DOWNING,
SUSAN HORMANN, MARY KRINGS,
KRIS KARCHER, SHELLY MCINNES,
RAYMOND MCNEELY, KIP OSWALD,
MICHAEL REAVES, JOHN RIDDLE, SEAN
SANBORN, ERIC SCHWENNINGER,
RICHARD WALTER, CHRIS WEBLEY,
ANTHONY WETMORE, KATHY WILCOX,
CRAIG ZANNI, DAVID ZAVALA, JOEL D.
SHAPIRO AS ADMINISTRATOR OF THE
ESTATE OF DAVID E. HALL, VIDOCQ
SOCIETY, CITY OF COQUILLE, CITY OF
COOS BAY, and COOS COUNTY
Cross-Defendants.

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on behalf
of S.M., a minor,
Plaintiffs,

Civil Case No. 3:21-cv-01719-MTK
(Trailing Case)

v.

OREGON STATE POLICE,
Defendant.

I. RULE 7-1 CERTIFICATE OF COMPLIANCE

Pursuant to LR 7-1, counsel for Plaintiffs Nicholas McGuffin and S.M. made a good faith effort to confer with counsel for Defendants in advance of filing this motion. The Defendants object to the relief requested.

II. RELIEF REQUESTED

Plaintiffs request the Court grant leave for Plaintiffs to file a combined response to the Defendants' motions for summary judgment. The Defendants filed four separate motions for summary judgment. Because many of the factual and legal issues overlap between the motions,

Plaintiffs request the Court's permission to combine the responses into one omnibus brief of 200 pages (50 pages x four responses = 200 pages), rather than filing four individual response briefs of 50 pages each (50 pages x four responses = 200 pages). Plaintiffs' omnibus brief will not exceed the aggregate page limit.

III. FACTUAL BACKGROUND

This case arises out of the wrongful conviction of Plaintiff Nicholas McGuffin. In July 2011, Mr. McGuffin was wrongly convicted of a murder that occurred in June 2000. His conviction was vacated by a post-conviction court by judgment dated November 29, 2019, and he was exonerated and released from incarceration on December 17, 2019. Plaintiffs filed this civil suit in July 2020 based on the Defendants' fabrication of evidence and withholding of favorable evidence in violation of Due Process.

As can be expected for a matter that has spanned more than 25 years, and with witnesses on all sides, discovery has borne out factual disputes that pervade almost each and every issue in this case. Nonetheless, in January 2025, the Defendants filed motions for summary judgment asserting there is no evidence to support Plaintiffs' claims.¹ The Defendants also filed more than 15,000 pages of transcripts, police reports, lab reports, and other materials from their investigative files.

The Municipal Defendants, State Defendants, and Vidocq filed their motions on January 7, 2025, and Plaintiffs' responses are due by February 18, 2025.² With permission from the Court, Walter filed his motion on January 21, 2025, and Plaintiffs' response is due by March 4, 2025.³ If this motion is granted, Plaintiffs intend to file one omnibus response to all four motions by February 18, 2025.

¹ See Municipal Defendants' Motion for Summary Judgment [Dkt. No. 281]; State Defendants' Motion for Summary Judgment [Dkt. No. 294]; Vidocq's Motion for Summary Judgment [Dkt. No. 287]; Walter's Motion for Summary Judgment [Dkt. No. 314].

² See Order at 2 [Dkt. No. 271].

³ See Order [Dkt. No. 278].

IV. AUTHORITY

The Defendants moved for summary judgment against each and every one of Plaintiffs' claims, requesting dismissal of this case in its entirety. Each of the four motions raise some of the same arguments, resulting in duplication between the briefs. For example, Vidocq and Walter each argue they are not "state actors" subject to liability under 42 U.S.C. § 1983. As another example, the Municipal Defendants, Vidocq, and Walter argue there is no evidence of conspiracy.

Because many of the factual and legal issues overlap between the four motions, Plaintiffs seek leave to file a combined response, addressing all four motions in one omnibus brief. A combined response will result in a clearer and more efficient presentation of the issues in several ways.

First, a combined response will reduce repetition. Plaintiffs could address the extensive factual record underlying the disputes in one section of a single brief, rather than in four sections of four separate briefs, providing an effective roadmap through the Defendants' 15,000+ pages of exhibits. Plaintiffs could also address the relevant law in one section of a single brief, rather than four sections of four separate briefs.

Second, a combined response will reduce the need for the Court to spend time cross-referencing the facts and legal arguments between briefs. For example, to respond to the argument that there is no evidence of a conspiracy, Plaintiffs must present the genuine issues of material fact that illustrate the myriad ways in which the Defendants have committed acts that "are unlikely to have been undertaken without an agreement," allowing the jury to infer the existence of a conspiracy.⁴ A combined response will allow the Court to review the facts

⁴ *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1301–02 (9th Cir. 1999) (citing *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir. 1991)).

associated with the acts of each Defendant individually, as well as all Defendants collectively, rather than hunting and pecking through four separate briefs to find the facts that show acts in concert. Indeed, although the Defendants have separated themselves into subsets, Plaintiffs have always alleged—and the facts will show—that the Defendants worked together to fabricate evidence and withhold favorable evidence. The facts cannot be easily segregated by each individual subset of Defendants.

Third, where the Defendants make different arguments, Plaintiffs can address those in separate sections of the response brief. Plaintiffs believe that all the arguments can be addressed efficiently where they overlap, and independently where they do not, in a single brief.

The Defendants object to Plaintiffs' request to file a combined response. There is no principled basis for the objection. Plaintiffs' proposal will not increase the page limit for the responses. The Court ordered a 50-page limit for the response to each motion,⁵ and Plaintiffs will combine the four responses into one brief of no more than 200 pages (50 pages multiplied by four motions). In addition, Plaintiffs will not require any extension of the response deadline. Indeed, Plaintiffs propose to *forego* the additional time the Court granted for Plaintiffs' response to Walter's motion.

Plaintiffs request the Court grant leave for Plaintiffs to file a combined response to the Defendants' motions for summary judgment.

DATED: January 31, 2025

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⁵ See Order at 2 [Dkt. No. 271].

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2025 the foregoing PLAINTIFFS' MOTION TO FILE A COMBINED RESPONSE TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT was served on the following parties at the following address by sending to them a true copy thereof via the method indicated below:

<p>Robert E. Franz, Jr. Sarah R. Henderson Law Office of Robert E. Franz, Jr. PO Box 62 Springfield, OR 97477 rfranz@franzlaw.comcastbiz.net shenderson@franzlaw.comcastbiz.net <i>Attorneys for Defendants</i> <i>City of Coquille, City of Coos Bay, Coos County, Craig Zanni, Chris Webley, Eric Schwenninger, Sean Sanborn, Ray McNeely, Kris Karcher, Pat Downing, Mark Dannels, Kip Oswald, Michael Reaves, David Zavala, Anthony Wetmore, Shelly McInnes</i></p>	<p>Jesse B. Davis Todd Marshall Kristen Hoffmeyer Oregon Department of Justice 100 SW Market Street Portland, OR 97201 todd.marshall@doj.state.or.us jesse.b.davis@doj.state.or.us kristen.hoffmeyer@doj.state.or.us <i>Attorneys for Defendants Oregon State Police, John Riddle, Susan Hormann, Mary Krings, Kathy Wilcox</i></p>
<p>Anthony R. Scisciani III Kelsey L. Shewbert Meredith A. Sawyer Lisa Lear HWS Law Group 101 SW Main Street, Suite 1605 Portland, OR 97204 ascisciani@hwslawgroup.com kshewbert@hwslawgroup.com msawyer@hwslawgroup.com llear@hwslawgroup.com <i>Attorneys for Defendant Vidocq Society</i></p>	<p>Eric S. DeFreest Luvaas Cobb 777 High Street, Ste. 300 Eugene, OR 97401 edefreest@luvaascobb.com</p> <p>Laura E. Coffin Coffin Law 541 Willamette Street, Ste. 211 Eugene, OR 97401 lauracoffin@coffin.law <i>Attorneys for Defendant Richard Walter</i></p>

☒ by electronic means through the Court's ECF System on the date set forth above.

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